HONOURABLE SRI JUSTICE A.GOPAL REDDY

W.P.No.24442 OF 2000

DATED:22-08-2007

BETWEEN:

A. Ranga Rao

PETITIONER

AND

Executive Engineer (Housing),
A.P. Housing Board, Kurnool,
Kurnool District.

RESPONDENT.

HONOURABLE SRI JUSTICE A.GOPAL REDDY

W.P.No.24442 OF 2000

ORAL ORDER

The petitioner claims to be the General Power of Attorney Holder of his wife Smt. A.Suvarchala Devi, filed this Writ Petition seeking to issue a writ of *mandamus* declaring the action of the A.P. Housing Board-respondent herein in keeping the house bearing No.32, MIG, at Abbasnagr, Kurnool under lock and key, as arbitrary and illegal.

According to the petitioner, his wife Smt.A.Suvarchala Devi was allotted the House bearing No.32, MIG, at Abbasnagar, Kurnool, through lot No.53 on 30.6.1995 by the A.P. Housing Board ('APHB'), respondent herein. The cost of the house was fixed at Rs.1,80,000/- and she was asked to pay Rs.25,000/- initially and the she accordingly paid the said sum. Possession of the house was given to her through handing over letter dated 28.9.1995. The wife of the petitioner, in all,

paid an amount of Rs.71,000/- towards installments and according to the petitioner, they are due only Rs.25,000/-. While so, Smt. Suvarchala Devi, due to ill-health, went to Pedapadu, West Godavari District where her son was staying. She is said to have intimated the change of address to the respondent for further correspondence. Later, when the petitioner and his wife went to Kurnool to their house in Abbasnagar in the month of July, 2000, the house was kept under lock and key. When they made enquiries with the office of respondent, they were informed that they are due some installments and the amount covered by said installments have not been cleared. According to the petitioner, no intimation letter was given to him or his wife by the respondent for payment of remaining installments, while they were at Pedapadu, West Godavari District, though the said address was furnished. Therefore, the action of the respondent in keeping the house under lock and key is arbitrary and illegal. It is pleaded in the Writ Petition that the petitioner has no other alternative remedy except to approach this Court under Article 226 of Constitution of India.

As the records disclosed that no counter affidavit has been filed and no relevant records were produced pursuant to the issuance of Rule Nisi, by order dated 1.8.2007 the Executive Engineer of the APHB was directed to be present today in the Court along with relevant records. Pursuant to the same, Mr. M. Janardhan Rao, Executive Engineer is present in the Court and produced the relevant records.

Sri Dasari Ranganath Kumar, learned standing counsel representing the APHB submitted that he has already filed a counter affidavit as long as on 3.8.2002. But the same is not found in the

file. Learned counsel for the petitioner also disputes about filing of the counter by the respondent. However, a copy of the counter affidavit is now furnished across the bar.

The records produced by the respondent discloses that on 31.8.1982, the wife of petitioner Smt. A. Suvarchala Devi made an application to the respondent for allotment of an MIG house at Kurnool on hire purchase basis along with registration fee of Rs.1,000/-. On 21.8.1989 APHB addressed a letter to the wife of petitioner intimating that it has acquired land at Kurnool near APSAP Camp and is proposing to ground the scheme shortly and that the approximate cost of MIG house would be Rs.1,10,000/- and that as per G.O.Ms.No.37, Housing, dt.3.11.1996, she has to pay 10% of the same towards EMD for considering her application. Pursuant to the said letter, the wife of petitioner paid Rs.10,000/- towards 10% of the approximate costs. This is apart from Rs.1,000/- paid along with the application. Since the proposed housing scheme is likely to be delayed, the respondent addressed a letter on 12.10.1991 to the petitioner's wife proposing to construct flats (1+1) at Abbasnagar and APHB Extension Colony (near B Camp) instead of houses at ASAP Camp land and requested her to give her option for considering her application for allotment of a flat at Abbasnagar and APHB Extension Colony. On 27.3.1993 the wife of petitioner addressed a letter to the respondent informing her change of address. The respondent by letter dated 14.7.1995 informed the wife of petitioner about allotment of MIG House No.32 at Abbasnagar, Kurnool in her favour on hire purchase basis subject to the conditions mentioned therein at a tentative cost of Rs.1,80,000/- and she accepted the allotment and paid Rs.25,000/- on 18.8.1995 towards difference in first 10% and towards the second 10% of the revised

tentative cost and she also paid the third 10% and cost of agreement form on 9.8.1995. On 27.9.1995 the wife of petitioner submitted agreement form and furnished another new address. On 28.9.1995 agreement was entered between the allottee and the respondent followed by handing over letter issued by respondent dated 28.9.1995. Through letter dated 27.7.1996 the petitioner's wife was informed about fixing the final cost of the house at Rs.1,86,400/- followed by a notice to pay arrears of installments and cost of escalation, dated 28.10.1996. As the petitioner's wife failed to pay the amount, notice-cum-provisional order of the competent authority under Sections 52 and 53 of the Andhra Pradesh Housing Board Act, 1956, to pay the arrears of installments of Rs.43,734/- was issued on 3.1.1998 and the same was acknowledged by one K. Lakshmi Devi, inmate of the house on 5.1.1998. As the said letter has not evoked any response, the respondent issued another letter dated 21.10.198 requiring the petitioner's wife to pay Rs.79,139/- towards arrears of installments, penal interest, cost of escalation and the said letter was acknowledged by one K. Dhanraj, inmate of the house. Even then, as there was no response, eviction order was passed by the competent authority of respondent on 1.4.1999 for failure to comply with the provisional notice-cum-order dated 21.10.1998. The said eviction order has been executed on 15.4.1999 and the house was taken into custody by the respondent.

While so, one Mr. M.R.Ramchandra made an application on 20.3.2000 to the respondent along with a D.D. for Rs.30,000/- for allotment of the said house in his favour. On 06.7.2000 the respondent passed an order of allotment allotting the house in favour of said M.R.Ramachandra on First come First serve basis at a cost of Rs.2,17,000/- on outright basis and asked him to pay entire balance

within 30 days. Accordingly, on 8.7.2000 he paid the entire balance of Rs.1,87,000/- and on 9.8.2000 an agreement was entered between Mr.M.R.Ramachandra and the respondent. On 10.8.2000 handing over letter was issued by respondent in favour of Mr. M.R.Ramachandra. At that stage, on 02.09.2000 the petitioner's wife addressed a letter to the respondent for restoration of her allotment. But, in view of the transaction entered with Mr.M.R.Ramachandra, the respondent executed a sale deed conveying the house in his favour on 28.9.2000 vide document No.23870/2000 having registered the same at the office of Sub-Registrar, Kurnool. On such sale deed being executed in favour of Mr.M.R.Ramachandra, the above writ petition came to be filed by the petitioner questioning the action of the respondent in keeping the house in its custody.

In view of the circumstances depicted through the records submitted by the respondent, the petitioner cannot be granted any relief as prayed for inasmuch as Mr.Ramachandra, in whose favour the house has been conveyed, has not been impleaded as party to this Writ Petition. Further, under Section 55 of the A.P. Housing Board Act, original allottee can prefer an appeal to the appellate authority against the action taken by the Competent Authority under sub-section (2) of Section 52 or Section 53 of the A.P. Housing Board Act, 1956, within one month from the date of confirmation of the order under Section 52 or the date of the service of notice under Section 53, as the case may be and the appellate authority may entertain the appeal even after the expiry of the said period of one month if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

In view of the above, the original allottee i.e. wife of the

petitioner can move the appellate authority by way of filing an appeal under Section 55 of the Act pleading appropriate relief and satisfying the appellate authority that she was prevented by sufficient cause for non-preferring the appeal in time and in such an event, it is for the appellate authority to consider the said aspect and pass appropriate orders thereon.

With the above observations, the Writ Petition is dismissed. No order as to costs.

AUGUST 22, 2007 A.GOPAL REDDY, J.
Tsr